OOI CHIN SENG & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim Yeop A. Sani J.) November 1, 1978]
[Ipoh — Criminal Appeals Nos. 93 & 94 of 1976]

Criminal Law and Procedure — Charge of operating a trawl net used with a boat — Conviction — Forfeiture of boat — Fisheries Act, 1963, s. 15 — Criminal Procedure Code (F.M.S. Cap. 6), s. 407.

Fisheries — Operating a trawl net used with a boat — Forfeiture of boat — Fisheries Act, 1963, s. 15.

In this case the two appellants were owners of the boats which formed the subject matter in two arrest cases. The two persons in the said arrest cases (who were not the appellants) were each found guilty of "operating trawl net used with engine 120 h.p. boat" in waters 5½ miles off the coast of Perak in contravention of the provisions of the Fisheries (Maritime) Regulations 1967. The said boats were ordered to be forfeited and the owners appealed.

Held: the boats were used in the commission of the offence and section 15(1) of the Fisheries Act, 1963 makes it mandatory to order their forfeiture.

Cases referred to:-

(1) *Chung Khiaw Bank Ltd.* v. *Public Prosecutor* [1968] 2 M.L.J. 196.
(2) *Ong See Ke* v. *Public Prosecutor* [1976] 2 M.L.J.
(3) *Public Prosecutor* v. *Lee Chin Chai* [1974] 2 M.L.J. 174.
(4) *Public Prosecutor* v. *Lee Chin Chai & Ors.* [1974] 1 M.L.J. 205.
(5) *Juk de Sa* v. *Public Prosecutor* [1975] 1 M.L.J. 283.

CRIMINAL APPEAL.

Yeap Ghim Guan for the appellants.

Lee Lim Huat (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The two appellants namely, Ooi Chin Seng in respect of Parit Buntar Arrest Case PB(A) 96 of 1973 and Tan Sock Lan in respect of Parit Buntar Arrest Case PB(A) 194 of 1973 are the owners of motor boats registration No. PK 2781F and PK 2192F respectively, which form the subject matters in the two arrest cases referred to above. In both the magistrate's cases referred to the accused persons (who were not the appellants) pleaded guilty to charges relating to contravention of the provisions of clause 1(a) of the Fifth Schedule to regulation 4(4) of the Fisheries (Maritime) Regulations, 1967 and punishable under section 13 of the Fisheries Act, 1963. In both the cases the charges respectively were that the accused persons were each found "operating trawl net used with engine 120 h.p. boat" in waters 5½ miles off the coast of Kuala Gula, Perak, in the case of PB(A) 96 of 1973 and in waters 4.01 miles off the coast of Tanjong Piandang, Perak, in the case of PB(A) 104 of 1973, in contravention of the provisions of clause 1(a) of the Fifth Schedule made under regulation 4(4) of the Fisheries (Maritime) Regulation, 1967 in that the said trawl nets shall be used only in waters beyond 12 miles limit of the coast.

The two appellants in this appeal were dissatisfied with the order of forfeiture of the vessels made by the learned magistrate and appealed against the forfeiture. Counsel for appellants argued solely on the following points: —

(a) That the learned magistrate erred in law in summarily ordering the forfeiture of the boats without holding an inquiry under section 407 of the Criminal Procedure Code.
(b) That the learned magistrate erred in law in not allowing the appellants to be heard.
(c) That the learned magistrate erred in law in holding that he had "no other choice" under the Act but to order forfeiture of the boats.

Grounds (a) and (b) can be dealt with together and ground (c) is one of construction.

It is the contention of the appellants that the two cases referred to in which the learned magistrate ordered forfeiture of the vessels did not fall under section 15 of the Fisheries Act, 1963 and therefore there was *discretion* as to forfeiture. As such the provision of section 407 of the Criminal Procedure Code should have been applied by the magistrate by holding an inquiry in which the owners of the vessels should be heard before any order of forfeiture could lawfully be made. In *Chung Khiaw Bank Ltd.* v. *Public Prosecutor*[1] the Federal Court in a criminal reference held that in respect of forfeiture of a motor vehicle seized under section 92 of the Road Traffic Ordinance, 1958, the court has discretion under section 92(4) of the Ordinance to forfeit the vehicle or to order the release of the vehicle and that the court should hold an inquiry under section 407(ii) of the Criminal Procedure Code and at such inquiry the true legal owner of the vehicle has a right to be heard. Section 92(4) of the Road Traffic Ordinance clearly provides that an order for the forfeiture or for the release of the motor vehicle seized shall be made by the court before which the prosecution has been held and that an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence. The operative words in section 92(4) with regard to forfeiture are "an order for the forfeiture of such vehicle *may* be made if it is proved to the satisfaction of the court that an offence against that section has been committed." The forfeiture provision there is clearly distinguishable from the forfeiture provision of the Fisheries Act, 1963 or as was referred to in the *Chung Khiaw Bank* case the forfeiture provisions of the Customs Ordinance (now repealed) and the Excise Act, 1961.

I dealt with the construction of section 15(1) of the Fisheries Act, 1963 in *Ong See Ke* v. *Public Prosecutor*[2] where at page 147 of the judgment the following appears:

"It is the contention of the counsel for the appellant that since a licence was in force in respect of the trawl net then the use of the net cannot be said to be 'prohibited'. This argument has no merit. It is to be noted that the licence issued was subject to a number of conditions and one of these conditions is that the area for the operation of the trawl net authorised is the area beyond 7 miles from the coast of the State of Perak. In other words the licence is valid only for trawl fishing outside the 7 miles off the coast but not within the 7 miles and using a trawl net within the 7 miles is therefore unauthorised or prohibited. Furthermore it is also clearly worded in section 13(1) of the Fisheries Act, 1963, which provides for the penalty for breach of provisions of the Act and regulations and rules thereunder where it states that any person who does any act contrary to, or fails to comply with, the provisions of this Act or any regulations or

rules made thereunder shall be guilty of an offence. Regulation 4(6) of the Fisheries (Maritime) Regulations, 1967 as amended in 1970 (vide P.U.(A) 56/70) provides clearly that a contravention of any of the conditions of the licence shall be deemed to be an act contrary to the regulations and by virtue of section 13(1) of the Act an offence under the Act. In this case the statutory conditions attached are as in the Fifth Schedule (see regulation 4(4))."

Counsel for the appellants relied on the Federal Court case *Public Prosecutor* v. *Lee Chin Chai*[3] which was a reference on the same section by the Public Prosecutor as a result of case *Public Prosecutor* v. *Lee Chin Chai & Ors.*[4] In fact the question raised in that reference before the Federal Court was a narrow one, that is whether a vessel in which fishing appliances are found contrary to regulation 3(b) of the Fisheries (Maritime) Regulations, 1967, is a thing in respect of which an offence has been committed contrary to the provisions of the Act or any regulations or rules made thereunder, and thereby liable to seizure under section 14(1) of the Fisheries Act, 1963 (as amended by Act A152 of 1972) and consequently liable to forfeiture under section 15(1) of the same Act. The answer to that was given in the negative by the Federal Court. Both these cases cannot be applied to the present appeal because in the instant case the offence was for operating trawl nets outside the prescribed area in the licence whereas in *Public Prosecutor* v. *Lee Chin Chai, supra,* the offence was for possession of fishing appliances without a licence.

The case of *Juk De Sa* v. *Public Prosecutor*[5] is not also applicable here because there the question of section 407 of the Criminal Procedure Code was not raised. Section 407 of the Criminal Procedure Code is a general provision relating to the order for disposal of property regarding which an offence has been committed and that during or at the conclusion of any inquiry or trial in any criminal court the court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. But the words of section 15(1) of the Fisheries Act, 1963 are so clear that an order for forfeiture *shall* be made if it is proved to the satisfaction of the court that the offence committed is either for using any net, instrument, fishing material or appliance which is "prohibited" or the offence is for doing or carrying on an act without a licence or permit required by that Act or any regulations or rules made thereunder provided that the "thing" was the subject-matter of or was used in the commission of the offence. There is no doubt also that the general provision of section 407 of the Criminal Procedure Code is overridden by the specific provision of section 15(1) of the Fisheries Act, 1963 with regard to disposal of property and that to have an inquiry under section 407 of the Criminal Procedure Code would in any case be meaningless for the court must give effect to the express words of section 15(1) of the Fisheries Act, 1963.

For the above reasons the appeal is dismissed.

Appeal dismissed.

Solicitors: *Yeap & Co.*

JEGATHESAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat F.J.) November 2, 1978]
[Kota Bharu — Criminal Appeal No. 22 of 1976]

Criminal Law and Procedure — Abetment of giving false evidence — Accomplice evidence — No corroboration.

Evidence — Accomplice Evidence — Need for corroboration.

The appellant had been convicted of the offence of abetting one Ramli in giving false evidence at a criminal trial. The appellant appealed. The principal evidence against the appellant was that of Ramli but the learned President of the Session Court did not consider whether Ramli was an accomplice and whether his evidence was corroborated.

Held: as the learned President had failed to consider whether the witness was an accomplice and as he had not advised himself of the dangers of convicting on the uncorroborated evidence of accomplices, the conviction was unsafe and must be quashed.

Cases referred to:-

(1) *Jaafar bin Deris* v. *Public Prosecutor* [1956] M.L.J. 183.
(2) *Rex* v. *Lim Yam Hong* 14 S.S.L.R. 152, 156.
(3) *Tay Choon Nam & Ors.* v. *R.* [1949] M.L.J. 157.
(4) *R.* v. *William Cyril Davies* (1930) 22 Cr. App. R. 33.
(5) *R.* v. *Baskerville* [1916] 2 K.B. 658.
(6) *R.* v. *Thomas Lewis* (1937) 26 Cr. App. R. 110, 113.

CRIMINAL APPEAL.

Edgar Joseph Jr. (*A. Wilson* with him) for the appellant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J.: The appellant, an advocate and solicitor of the High Court of Malaya, was convicted of the offence of abetting one Mohd. Razali alias Ramli bin Awang (Ramli) in giving false evidence at a criminal trial, an offence punishable under sections 109 and 193 of the Penal Code and he was sentenced to 1 day's imprisonment and a fine of $2,000. He appeals to the High Court against his conviction.

The facts leading up to the appellant's trial can be shortly stated. Ramli was the victim of an unfortunate shooting case and is perhaps fortunate to be alive. He became a prosecution witness, if not the chief prosecution witness against the persons (Che Muda @ Che Mamat, Yazid bin Che Mamat and Zainal bin Jaafar) charged with voluntarily causing hurt under section 324 Penal Code. The appellant appeared for the accused. In the course of his evidence at this trial, Ramli testified that at the time and place mentioned in the charge of voluntarily causing hurt, he was walking. Then there was an adjournment. Before the resumption, he saw the appellant in the latter's office. The circumstances of this interview will be gone into later. But at the continuation of the trial, the appellant applied to recall Ramli for further cross-examination. On his application being allowed, the appellant succeeded shortly in eliciting from Ramli the information that he was not walking but that he was riding a motor-cycle at the relevant time. The appellant had thus obtained from Ramli a contradiction which appeared to the trial judge so material that he found Ramli, apparently on the strength of this one contradiction, an untruthful wit-